

Information sheet

Employment of foreign workers in Germany

Questions, answers and information for employees and employers

7



Guide to this information sheet

This information sheet details the most important legal regulations that must be observed when employing foreign employees. However, the legal situations may not be exhaustive.

If you have any questions, please contact your immigration office or employment agency responsible for the procedure to enter the regional labour market.

For more information, please call **0228/713 2000** which is valid for all Germany.

Chapter 1 includes some important terms and legal bases for the employment of foreign nationals and general information.

Chapter 2 contains regulations on access to the labour market for persons who would like to permanently settle in Germany.

Chapter 3 summarises jobs and professions that can only be carried out on a temporary basis.

Chapter 4 contains provisions regarding access to the labour market for posted workers.

Chapter 5 describes the conditions of entry for specific groups of persons.

Chapter 6 contains provisions regarding access to the labour market based on international agreements.

Chapter 7 contains regulations on employment during residence in Germany arising from international legal, humanitarian or political grounds and for persons with toleration status and asylum seekers.

Chapter 8 explains the procedural rules.

Chapter 9 provides information on the ban on the recruitment and placement of health and care professionals from specific countries.

Chapters 10 to 13 contain more important aspects of accepting employment.

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Preface

Citizens from countries that do not belong to the European Union (EU) or the European Economic Area (EEA) require a residence permit to enter and remain in Germany. Access to the German labour market is determined by the regulations of the German Residence Act (AufenthG) and the ordinance on the employment of foreign nationals (Employment Ordinance - BeschV). § 18 AufenthG regulates residence for the purpose of gainful employment and requires approval from the Federal Employment Agency (BA), unless it is stipulated by law, as part of an intergovernmental agreement or the employment ordinance states that employment may be accepted without the approval of the Federal Employment Agency.

Approval to accept employment is granted by the immigration office along with the residence permit. If approval is required from the Federal Employment Agency to pursue employment, approval must be obtained in an official internal procedure. In many cases the residence permit may be issued for employment purposes without the approval of the Federal Employment Agency.

This procedure applies both to employees who have recently arrived and to persons who are already resident in Germany or whose habitual residence is in Germany.

Persons who wish to enter Germany to commence employment must apply for a visa at the respective diplomatic mission in their country of origin (embassy, consulate) prior to starting work. The procedure is described in chapter 12.

This information sheet and subsequent information sheets, information and forms issued by the Federal Employment Agency are available online at www.arbeitsagentur.de/arbeitsmarktzulassung.

1. General

Approval generally requires:

1. A legal provision granting access to the German labour market;
2. The existence of an actual job offer, and
3. The working conditions are comparable to those of German nationals and, in the event of a "priority review", no employees with higher-priority rights are available to fill the specific job.

1.1. Legal bases

The following bases are decisive for the decision to grant a residence permit which entitles employees to accept work:

- Law on the residency, employment and integration of foreign nationals within the federal territory (Residence Act – AufenthG)
- Ordinance regarding the employment of foreign nationals (Employment Ordinance – BeschV)

1.2. Important terms

- **Gainful employment** refers to persons who are self-employed and to those gainfully occupied as employees.

- **Employment** refers to persons who are gainfully employed as employees, in particular in an employment relationship in accordance with the German Social Code (§ 7 SGB IV).

The acquisition of professional knowledge, skills or experience within the framework of in-company vocational training (advanced training, retraining, training, further education) is also considered employment).

- **Foreign nationals**

Persons who are not **German** within the meaning of Article 116 of the Grundgesetz (Basic Law).

- **Nationals of the European Union (EU)**

Citizens of an EU member state may accept employment in another member state without obtaining a work permit. They are legally equivalent to German (domestic) workers.

Citizens of EU member states enjoy the full freedom of movement for workers.

Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Ireland, Italy, Croatia, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Romania, Sweden, Slovenia, Slovak Republic, Spain, Czech Republic, Hungary and Cyprus.

- **European Economic Area (EEA)**

The EEA includes the EU member states and Iceland, Norway and Liechtenstein. EEA nationals also enjoy unlimited freedom of movement for workers.

Swiss citizens are not part of the EEA, but are equal to EEA nationals under the agreement on "Free movement of labour between Switzerland and the EU".

- **Third countries**

Third countries in this information sheet refers to all countries that do not belong to the European Union (EU) or the European Economic Area (EEA). Switzerland is equivalent to an EEA country.

1.3. Residence permit

- **Visa [§ 6 AufenthG]**

A temporary visa is granted by the German diplomatic mission in the applicant's country of origin (embassy, consulate) prior to entering the country (chapter 12).

- **Residence permit [§ 7 AufenthG]**

A residence permit is generally temporary and for a specific purpose, e.g. training, employment, family reunification or on humanitarian grounds.

- **EU Blue Card [§ 18 b para 2 AufenthG]**

The EU Blue Card is a temporary residence permit for employees with an academic or similar qualification and a specific minimum income.

- **ICT Card [§ 19 AufenthG]**

A temporary residence permit is issued for employees transferred internally (managers, specialists, trainees) to a subsidiary in Germany if the company for which the foreign national works is domiciled outside the EU.

- **Mobile ICT Card [§ 19 b AufenthG]**

A residence permit for "long-term mobility" (internal company transfers in Germany must exceed 90 days) for employees transferred within the company who already have an ICT residence permit from another EU member state.

Skilled labour with vocational training (§18a AufenthG)

A residence permit for skilled labour with vocational training for qualified employment which requires the qualifications the employee has acquired.

Academic professionals (§18b para 1 AufenthG)

A residence permit for academic professionals who do not fulfil the requirements for the Blue Card.

IT experts (§19c para 2 AufenthG and § 6 BeschV)

A residence permit for IT specialists with no professional qualification, but with a minimum of three years of relevant professional experience.

- **Settlement permit [§ 9 AufenthG]**

The permanent settlement permit is unlimited in time and geography and entitles holders to pursue gainful employment.

- **Permanent residence EU – unlimited - [§ 9a AufenthG]**

Third-country nationals receive a permanent EU residence permit after five years of legal residence in Germany or within the European Union. It entitles such persons to accept employment.

No residence permit, but documents that can prove the applicant's residence status are:

- **Temporary residence permit**
[\$ 61 para 2 Asylgesetz (Asylum Law)]

A temporary residence permit is granted to persons who conducting their asylum procedure.

- **Toleration status**
[\$ 60a AufenthG]

Toleration status is granted if the deportation of a foreign national has been temporarily suspended.

All decisions relating to legal residence are taken by the local immigration authorities who are also the contact persons for questions regarding residence and employment. If you have a visa, you can contact the relevant diplomatic mission or the Federal Foreign Office.

1.4. A residence permit to carry out the recognition procedure of foreign professional qualifications § 16d AufenthG

A residence permit for foreign nationals for the purpose of recognising the professional qualifications they have gained outside Germany and to carry out qualification measures and practical initial training.

Apart from placement agreements, the residence permit is issued for up to 18 months, and can be extended by six months to a maximum residency period of two years (§16d para 1, para 3 AufenthG). It entitles the holder to additional work for a maximum of 10 weeks of study (§16d para 2 AufenthG).

As part of a placement agreement the Federal Employment Agency has concluded with the relevant labour administration in the country of origin, residence is only issued for one year, and may be extended to a maximum of three years (§16d para 4 AufenthG). The Federal Employment Agency has concluded placement agreements to attract skilled health and care workers in the Triple Win project (<https://www.arbeitsagentur.de/vor-ort/zav/Triple-Win-Pflegekraefte>).

2. Immigration of skilled labour

This group of persons includes, in particular, highly qualified graduates from German universities, managers, executives and specialists and persons who have completed qualified vocational training in Germany or an equivalent vocational training outside Germany to enable them to carry out qualified employment.

2.1 The granting of a residence permit for employment **without approval from** the Federal Employment Agency for

- **Highly qualified persons** with a settlement permit.

[§18c para 3 no. 1 AufenthG]

- **Holders of an EU Blue Card** whose salary is at least two thirds of the contribution assessment ceiling in the general statutory pension insurance scheme (2021 = 56,800 Euros).

[§18b para 2 AufenthG]

- **Teaching professionals, research assistants, visiting research scientists, engineers and technicians** who are part of the **research team** of a visiting scientist, and teachers from public schools, state-approved private schools or recognised private supplementary schools.

[§ 5 BeschV]

- **Foreign nationals with an EU Blue Card or residence permit and**

- have legally accepted employment subject to **compulsory insurance** in the federal territory for **two years**, or
- have been in the federal territory continuously, with toleration status or with a temporary residence permit for **three years**.

[§ 9 BeschV]

2.2 The granting of a residence permit for employment **with approval from** the Federal Employment Agency for

Foreign nationals with **vocational training** for qualified employment which the qualification they have acquired enables them to perform.

[§ 18a AufenthG]

- **Academics** who accept qualified employment and whose qualifications enable them to carry out such employment, but who do not fulfil the requirements of the Blue Card.

[§ 18b para 1 AufenthG]

- IT specialists **with no formal qualifications**, but with a minimum of three years of relevant professional experience.

[§ 6 BeschV]

- **Executives and specialists with company-specific specific knowledge** of a company domiciled in Germany for qualified employment in such company.

[§ 3 BeschV]

- Foreign nationals, who must carry out a temporary **practical activity to determine the equivalence** of the qualifications they obtained outside Germany.

[§ 8 para 3 BeschV]

3. Temporary employment

3.1 The granting of a residence permit for employment **without approval from the Federal Employment Agency** for

- Employees **seeking suitable employment** after their professional qualifications have been recognised.

[§ 20 para 3 no. 4 AufenthG]

- Foreign nationals **seeking** state-recognised or comparable regulated **qualified employment** after **completing qualified vocational training in Germany**.

[§ 20 para 3 no. 3 AufenthG]

- Students and university graduates who wish to carry out a **study-related internship** in accordance with Directive (EU) 2016/801 for a **maximum of six months**.

[§ 16e para2 AufenthG]

- **Graduates from German universities** to find employment that is commensurate with their degree studies.

[§ 20 para 3 no. 1AufenthG]

- Persons who take part in **voluntary work** regulated by law or based on an EU programme (e.g. the German voluntary social year, federal volunteers service).

- Persons mainly employed for **charitable or religious purposes** and for whom, from 1st October 2020, the minimum conditions are basic German skills.

- Students and school pupils from foreign universities and technical colleges to pursue a **holiday job of up to 90 days within a period of 12 months**, if the employment was arranged without the approval of the Federal Employment Agency.

[§ 14 BeschV]

- **Internships for training purposes**

- within the framework of § 16e AufenthG (study-related internship EU)
- during a stay for school-based training or studies, which are demonstrably required as part of the respective training/studies or to achieve the educational/study objective
- as part of a programme funded by the EU or a bilateral development cooperation
- by specialists and executives who receive a scholarship from public German funds or EU funds (government interns).

3.2 The granting of a residence permit for employment **without approval from the Federal Employment Agency, but agreed by the Federal Employment Agency for internships for training purposes**

- as part of a proven international exchange programme arranged by associations, public law institutions or student organisations for students or graduates of foreign universities in agreement with the Federal Employment Agency

- up to one year while studying at a foreign university that is pursued after the fourth semester in a subject-specific programme in agreement with the Federal Employment Agency.

[§ 15 BeschV]

3.3 The granting of a residence permit for employment **with approval from the Federal Employment Agency for**

- **Vocational and further training** for in-company (partial) training or further training for the period of training specified in the training regulations, and for further training for the period required to achieve the objective of the further training.

[§ 16a para 1 AufenthG with § 8 para 1 BeschV]

- Employees who have a professional qualification and must complete a **qualification measures including subsequent examinations** for such qualification to be recognised.
- An activity that is not time-limited, and must be closely linked to the profession for which the recognition has been acquired. The condition here is that a specific job offer exists in the future profession for the period after the recognition of the qualification. Both activities require the approval of the Federal Employment Agency. A classic example are skilled health and care workers who come to Germany to enable their training to be recognised and who also work as nursing and care assistants.

- Employees with a professional qualification and who **must take an examination for such qualification to be recognised if they have a corresponding job offer.**

[§ 16d AufenthG with § 8 para 2 BeschV]

- Employees who have a university degree or comparable qualification and who are employed as part of an **exchange of personnel within an international company or group.**

[§ 10 para 1 no. 1 BeschV]

- Employees of an international group or section of a company with qualifications comparable to German skilled workers if the **activity is required to prepare for the implementation of a project abroad.**

[§ 10 para 1 no. 2 BeschV]

- Employees **transferred internally** to issue an ICT card in accordance with 19b and to grant a mobile ICT card pursuant to § 19 AufenthG, who will be employed as **managers, specialists or trainees** for over 90 days in the company branch receiving such employee. Approval is granted without a priority review.

[§ 10a para 1 BeschV]

- **Teaching professionals for language teaching** in schools under the supervision of the relevant professional consular representatives.

[§ 11 para 1 BeschV]

- **Speciality chefs** for full-time employment in speciality restaurants.

[§ 11 para 2 BeschV]

- **Au-pairs** with a basic knowledge of the German language who are under 27 years old and who are working for up to one year with a family where German is spoken as the mother tongue. If the family speaks German as their first (family) language, approval may be granted if the au pair does not come from the host family's home country. Approval is granted without a priority review.

[§ 12 BeschV]

- **Domestic workers of posted employees** employed to look after children under 16 years of age or a dependent family member if the employment was commenced at least one year before entry into the household.

[§ 13 BeschV]

- **Seasonal employment, show/fair workers and domestic help** based on a placement agreement between the Federal Employment Agency and the foreign labour administration. Placement agreements with Georgia und Republic Moldova exist for this type of employment.

[§ 15a – 15c BeschV]

4. Posted employees

4.1 The granting of a residence permit for employment **without approval from the Federal Employment Agency** for

- **Business travellers** whose temporary employment at the head office of the German employer is necessary for the effective commercial representation of the company outside Germany, or who travel abroad as part of their employment to carry out short-term commercial activities, including meetings and negotiations, to conclude contracts or to purchase goods that are intended for export or to establish, monitor or manage a section of the company domiciled in Germany for an employer domiciled abroad, provided they do not stay in Germany for over 90 days within a period of 180 days.

[§ 16 BeschV]

- **Skilled labour of an international group or company** who are employed outside Germany, **for the purpose of further professional training** in the group or section of the company domiciled in Germany for up to 90 days within a period of 12 months.

[§ 17 BeschV]

- **Journalists** recognised by the Federal Government's Press and Information Office working for a foreign employer for no longer than 90 days within a period of 12 months in the federal territory.

[§18 BeschV]

- **Persons who are posted to Germany by their employer with its head office outside Germany for up to 90 days within a period of 12 months to**

- **install and assemble machines, systems and programs for data processing** for commercial purposes which have been ordered by the employer, to **instruct others** in their operation, or to **maintain or repair** such machines *)
- **collect machines, systems and other items** that have been purchased or to receive instruction in their operation.
- **dismantle** used equipment or systems purchased to reassemble them in the employer's country of residence, *)
- **assemble, dismantle and staff** the company's own **trade fair stands** or trade fair stands for a foreign company located in the country where the employer's head office is domiciled, or
- complete a **company training course** within the framework of export and licence agreements.

*) the staffing of trade fair stands requires the employer to report such employment to the Federal Employment Agency prior to the activity. The relevant form is available online at www.arbeitsagentur.de/arbeitsmarktzulassung.

[§ 19 BeschV]

- **Drivers** operating in international **road and rail traffic**
 - in the territory of the EEA for **cross-border traffic** or cabotage operations and for which a driver attestation has been issued to the employer.
 - in a third country for **cross-border freight transport** and the vehicle is registered in the country where the employer is domiciled, for a maximum stay of 90 days within a period of 12 months or a vehicle registered in Germany driven to a country outside of this area.

- **Drivers** employed in cross-border **passenger transport** by road for an employer domiciled outside Germany driving a vehicle for the cross-border journeys which is registered in the country in which the employer is domiciled:
 - in regular, cross-border bus services, even if the vehicle is registered in Germany;
 - in cross-border rail transport if the transport company is domiciled abroad.

[§ 20 BeschV]

- **Workers from third countries** who are temporarily posted to the federal territory by a company domiciled in the EEA **to provide services** if they are normally employed in the country in which the company is based.

The “freedom to provide services” enables companies to temporarily provide their services in other member countries. The companies may bring their employees with them.

[§ 21 BeschV]

4.2 The granting of a residence permit for employment **with approval from the Federal Employment Agency** for

- **Persons** who are posted to Germany by their employer who is domiciled outside Germany for **longer than 90 days and up to three years** to
 - **Install and assemble machines, systems and programs for data processing** for commercial purposes which have been ordered by the employer, to **instruct others** in their operation, or to **maintain** or **repair** such machines,
 - **Dismantle used equipment** or systems purchased to reassemble them in the employer’s country of residence

[§ 19 para 2 BeschV]

5. Specific professional groups and groups of persons

5.1 The granting of a residence permit for employment **without approval from the Federal Employment Agency** for

- Persons whose habitual residence is outside Germany, who present **lectures, performances of specific scientific or artistic value, performances of a sporting nature, festivals, guest performances or music and culture days** if the duration of the activity does not exceed 90 days within a period of 12 months.

[§ 22 nos. 1 and 2 BeschV]

- Persons who appear in **daily performances** up to 15 days a year.

[§ 22 no. 3 BeschV]

- **Professional athletes or professional coaches and trainers** who will be employed in German sports clubs or comparable sports facilities engaged in competitive sports and aged 16 years or above, and the club or institution pays a gross salary that is at least 50% of the contribution assessment ceiling for the statutory pension insurance scheme, and the leading German association responsible for the sport, in agreement with the German Sports Association, confirms the person's sporting qualification as a professional athlete, coach or trainer.

[§ 22 no. 4 BeschV]

- Persons who practice eSport in the form of a competition between others on a professional basis and who will be employed in German clubs or comparable eSports facilities participating in competitions, aged 16 years or above, and the club or institution pays a gross salary of at least 50% of the contribution assessment ceiling for the statutory pension insurance scheme, and the leading German association responsible for eSports confirms the professional practice of eSports and the form of eSports exercised is of considerable national or international importance.

[§ 22 no. 5 BeschV]

- **Photographic models, advertising professionals, mannequins and models.**

[§ 22 no. 6 BeschV]

- **Tour guides** whose habitual residence is outside Germany who accompany groups of foreign tourists in Germany, if the duration of the activity does not exceed 90 days over a period of 12 months.

[§ 22 no. 7 BeschV]

- **Interpreters** whose habitual residence is outside Germany who work for a company domiciled abroad who attend meetings and negotiations in Germany if the duration of the activity does not exceed 90 days within a period of 12 months.

[§ 22 no. 8 BeschV]

- Domestic workers whose habitual residence is outside Germany and who accompany their employer or their employer's family members to Germany, whose habitual residence is also abroad, for a duration of 90 days within a period of 12 months.

[§22 no. 9 BeschV]

Persons who are accredited to enable them to prepare, participate, implement and follow **international sporting events**.

[§ 23 BeschV]

- **Persons in the shipping and aviation sectors**

- who are members of **crews** of seagoing vessels engaging in international traffic
- who are authorised **sea pilots** in accordance with the Sea Pilot Act
- who are employed as **technical personnel on inland navigation vessels** and who work in cross-border traffic and for the necessary care of guests as **operational and service personnel** on **passenger ships**
- the **crews** of aircraft, with the exception of air pilots, flight engineers and flight navigators working for companies domiciled in Germany.

[§ 24 BeschV]

5.2 The granting of a residence permit for employment **with approval** from the Federal Employment Agency for

- **Professional drivers in freight and passenger transport.**

[§ 24a para 1 BeschV]

- **Performers and artists** and the assistants required for their performances.

[§ 25 no. 1 BeschV]

- Persons who are sent to work for a period of longer than 90 days as part of **guest performances or foreign film and television productions.**

[§ 25 no. 2 BeschV]

- Nationals from **Andorra, Australia, Israel, Japan, Canada, the Republic of Korea, Monaco, New Zealand, San Marino, the United Kingdom of Great Britain and Northern Ireland within the meaning of §1 para 2 Nr. 6 Freedom of Movement Act EU as well as the United States of America** for employment, regardless of where the employer is domiciled.

[§ 26 para 1 BeschV]

- Nationals from Albania, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro and Serbia, regardless of their professional qualifications, for employment of any kind.

A firm job offer or training placement from an employer based in Germany and a national visa are required to enter Germany. It is not possible to apply within Germany.

In addition, the applicant may not have received benefits under the German Asylum Seekers Benefits Act in the last 24 months before applying for a visa in Germany. This prohibition does not apply to persons who applied for asylum between 1st January 2015 and 24th October 2015, were still in Germany on 24th October 2015 and then left the country immediately.

The regulation applies from 2016 to 2020 inclusive.

[§ 26 para 2 BeschV]

- **Cross-border employment**

[§ 27 BeschV]

Please consult the immigration authorities for further information, who will also provide information about other groups of people who may be employed with or without the approval of the Federal Employment Agency and the maximum duration of such employment.

6. International agreements

If an intergovernmental agreement exists regulating the exercise of employment, the granting of consent will be governed by this agreement.

- **Workers on fixed-term contracts**

The basis for the entry of foreign employees is the agreements concluded by the Federal Republic of Germany with the Republics of Bosnia-Herzegovina, Macedonia, Serbia and Turkey on the posting and employment of employees of foreign companies based on work contracts.

Information sheet 16 contains information on the entry requirements and procedure.

[§ 29 para 1 BeschV]

- **Guest workers**

Guest workers are persons who have already acquired a professional qualification in their home country, have German language skills and take up employment in Germany to perfect their professional and linguistic competence (maximum period 18 months).

The legal basis is bilateral agreements with Albania and the Russian Federation.

[§ 29 para 2 BeschV]

**Further opportunities exist for foreign nationals to enter and work in Germany within the framework of international agreements.
The immigration authorities will provide additional information.**

7. **Employment during residence on international legal, humanitarian or political grounds, for persons with toleration status and asylum seekers**

7.1 **The granting of a residence permit for employment **without approval from** the Federal Employment Agency**

- **Refugees who are recognised as such and entitled to asylum have extensive access to the labour market.** They have a residence permit in accordance with § 5 AufenthG, which gives them unrestricted access to the labour market.

[§ 31 BeschV]

- **Foreign nationals with toleration status or a temporary residence permit**
 - for **preparatory internships** that are not remunerated with the minimum wage
 - for **vocational training** in a state-recognised or comparable skilled occupation
 - for a post as a **highly qualified person, executive, scientist/researcher** within the framework of legally regulated voluntary services, school-based and EU-funded internships, etc. employment without approval is permitted
 - who have been permitted to stay in or have enjoyed toleration status in Germany, or if they have been granted a temporary residence permit for **four years**.

[§ 32 para 2 BeschV]

2. 7.2 **The granting of a residence permit for employment **with approval** from the Federal Employment Agency**

Persons with toleration status and asylum seekers may be authorised to accept employment if they have been legally resident in Germany for three months. However, asylum seekers are not allowed to work for as long as they live in the reception centre. The waiting period can therefore be up to six months (§ 61 para 1, § 47 para 1 sentence 1 AsylG).

Asylum seekers from safe countries of origin must live in the reception centre for the entire duration of the asylum application procedure. Moreover, a general ban on employment applies to asylum seekers and persons with toleration status who applied for asylum after 31st August 2015 or whose asylum has been rejected (§ 61 para 2 sentence 4 AsylG/ § 60a para 6 sentence 1 no. 3 AufenthG).

Safe countries of origin are Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia (former Yugoslav Republic), Montenegro, Senegal and Serbia. (Effective: September 2021, the current safe countries of origin can also be found at: <https://www.bamf.de/EN/Themen/AsylFluechtlingsschutz/Sonderverfahren/SichereHerkunftsstaaten/sichereherkunftsstaaten-node.html;jsessionid=48700EC6292D5FBBA1A921566BC5CDAF.internet552>)

[§ 32 para 1 BeschV]

8. Approval process for employees from third countries

Specialist teams in the employment agencies in Erfurt, Essen, Cologne, Frankfurt am Main, Munich and Stuttgart are responsible for the implementation of the labour market entry procedure at the Federal Employment Agency. You can find out which team is responsible in the overview following this information sheet.

8.1 Application for a residence permit to accept employment

When applying for a residence permit that would allow the person to accept employment, the German diplomatic mission or immigration authorities will check if such employment requires approval. The Federal Employment Agency will be involved if the employment is subject to approval.

8.2 Responsible team

The Federal Employment Agency teams responsible for labour market admission procedures carry out the approval process with the immigration authorities or the diplomatic missions abroad. The regional team responsible is the team in the district in which the German employer is domiciled.

Two teams in Bonn are responsible for special groups of persons and for all employers throughout Germany (e.g. artists, specialty chefs, nursing staff from placement agreements, holiday activities and study-related internships abroad, the enrolled international staff exchange team, employees transferred internally).

8.3 Examination of the approval requirements

The Federal Employment Agency is legally obliged to carry out an examination of the labour market if foreign employees are employed. The labour market examination consists of checking the conditions of employment and, if necessary, a priority review. The labour market approval teams and the regional employer services work closely together in this process. The aim of the labour market examination is to prevent adverse effects on the German labour market and to avoid distortions of competition arising from the employment of foreign workers. The working conditions must always be inspected. A priority review is only carried out if this is expressly regulated under the legislation (BeschV).

- The **priority review** includes an examination of whether privileged domestic or equivalent applicants are available for the specific employment. In addition to German applicants, citizens of the European Union, the European Economic Area and Swiss citizens are considered as privileged. Third-country nationals with unrestricted access to the labour market are also privileged; this includes persons with recognised refugee status.
- The **examination of the conditions of employment** includes the essential working conditions applicable to an employment relationship, in particular remuneration and working hours. The examination is carried out in accordance with the job description that has been completed and signed by the employer. The examination is based on the collective labour and remuneration conditions. If no collective agreements apply, the examination explores the minimum industry pay level for the specific activity or a local pay level for comparable activities. If the activity cannot be assigned to any of the criteria mentioned, the general statutory minimum wage shall apply.

If the comparability of working conditions is not possible, the Federal Employment Agency may not consent to the granting of a residence permit for employment (§ 39 para 3 AufenthG). If the law requires a priority review and if the labour market examination ascertains that employees with priority status are available for employment, the Federal Employment Agency may also not consent to the granting of a residence permit for employment (§ 39 para 3 no. 3 AufenthG).

Employers can significantly shorten the decision-making process if the job offer is submitted to the employment agency at an early stage. In these cases, the decision of the Federal Employment Agency may be communicated immediately upon receipt of the approval request (declaration of employment).

For most groups of persons/professions, approval without a priority review may be granted provided the working conditions correspond to those of comparable domestic employees (e.g. for skilled labour with professional qualifications in accordance with § 18a AufenthG and skilled labour with an academic training pursuant to § 18b).

Employers who wish to employ a foreign national or who require, or have received, approval from the Federal Employment Agency for this purpose must provide the Federal Employment Agency with information on remuneration, working hours and other working conditions.

The approval conditions also apply to foreign nationals who are already permitted to reside in Germany and to foreign nationals who wish to enter Germany to accept employment.

8.4 Approval procedure carried out by the Federal Employment Agency

Before submitting an approval request for a foreign worker, the employer may check the existence of the labour market conditions for the subsequent granting of approval.

A detailed job description with information on the working conditions and requirements for the qualification of the applicant and proof of the applicant's qualifications must be submitted.

An employer can make use of this option should he wish to clarify in advance whether he is permitted to fill the position with a foreign worker and thereby speed the process up.

Employers can use this procedure to significantly accelerate the decision-making process. A description of the approval procedure and the application forms are available online at: www.arbeitsagentur.de/arbeitsmarktzulassung

8.5 Approval restrictions implemented by the Federal Employment Agency

The approval to grant a residence permit, which entitles the holder to accept employment, may be restricted with regard to the period of validity, the company, the professional activity, the employer, the district of the employment agency and the location and the distribution of working hours.

Approval is granted for a maximum of four years.

In the case of jobs for which a time limit is stipulated in accordance with a regulation or an intergovernmental agreement, approval will be granted for a maximum of the specified duration.

The restrictions set out in the approval of the Federal Employment Agency (time limit of approval, type of employment, employment, location and distribution of working hours) must be stated in the residence permit by the German diplomatic mission/immigration authorities.

Any residence legislation issues must be clarified with the immigration authorities prior to changing jobs or to any changes in working conditions.

9. Recruitment and job placement from abroad

The recruitment in, and work placement from, the countries listed in Annex 1 to this information sheet may only be carried out by the Federal Employment Agency for employment in the health and care professions. The list includes the 57 countries identified by the World Health Organisation (WHO) that have a shortage of health workers. Immigration of skilled health and care workers from these countries is therefore only possible if the potential employee independently initiates an application for employment.

Persons who deliberately or negligently conduct recruitment or job placements in this case are in violation of this ruling (§ 404 para 2 no. 9 SGB III).

[§§ 38; 39 BeschV]

10. Refusal of approval

Approval for a foreign worker to take up employment **must** be refused if the employee wishes to work as a **temporary worker**, or if the employment relationship has been established based on illegal placement or recruitment (no. 9.).

Approval **may** be refused if

- the foreign worker or the employer has culpably violated the relevant legal provisions
- serious grounds exist in the person of the employee.

[§ 40 AufenthG]

11. Refusal

Approval **may** be revoked if the foreign nationals are employed under less favourable working conditions than comparable employees in Germany, or if grounds exist for refusal in accordance with § 40 AufenthG.

[§ 41 AufenthG]

12. Visa application to enter Germany to commence employment

The German diplomatic missions in the applicant's home country are responsible for issuing the visa required to work in Germany. Applicants should contact their respective diplomatic mission in good time before the intended entry into Germany to enquire about the relevant local conditions with regard to the granting of a visa.

Where possible, applicants should submit all the documents relevant to the decision to issue a visa to avoid excessive queries. This normally includes a valid passport and, if the applicant's current place of residence is not their home country, a valid residence permit for their country of residence.

Applicants should apply for a visa as early as possible before the intended commencement of employment, as the time taken to process such application may often be lengthy.

Please note the approval procedure (no. 8.4) to speed up the entry process.

13. Administrative offences

Foreign nationals who work without the required residence permit and employers who employ a foreign citizen without the essential residence permit are acting unlawfully.

Administrative offences may be penalised with a fine.

[§ 404 SGB III]

14. Data protection

The German Social Code (SGB) protects you in particular against the unlawful collection and use of your personal data, which may only be processed and used where stipulated by a legal provision or if you have given your consent.

The Federal Employment Agency requires your information to check whether acceptance of employment can be approved. Your necessary cooperation arises from §§ 60 et seq. First Book of the German Social Code (SGB I).

Your personal data may also be stored and used to the extent necessary to fulfil other tasks of the Federal Employment Agency and the respective employment agency in accordance with SGB X.

You can request information about the storage of your personal data, correct the data or block or delete such data in the cases specified by law.

Personal data is subject to the secrecy of social data [§ 35 SGB I] and may only be disclosed pursuant to the restricted conditions of §§ 67 et seq. SGB X.

Recruitment in and job placement from the following countries may only be carried out by the Federal Employment Agency for the health and care professions (Annex to §38 BeschV):

1. Afghanistan (Islamic Republic of Afghanistan)
2. Angola (Republic)
3. Equatorial Guinea (Republic)
4. Ethiopia (Federal Democratic Republic)
5. Bangladesh (People's Republic)
6. Benin (Republic)
7. Burkina Faso
8. Burundi (Republic)
9. Côte d'Ivoire (Republic)
10. Djibouti (Republic)
11. Eritrea (State of Eritrea)
12. Gabon (Gabonese Republic)
13. Gambia (Republic)
14. Ghana (Republic)
15. Guinea (Republic)
16. Guinea-Bissau (Republic)
17. Haiti (Republic)
18. Yemen (Republic)
19. Cameroon (Republic)
20. Kiribati (republic)
21. Congo (Democratic Republic)
22. Congo (Republic)
23. Lesotho (Kingdom of Lesotho)
24. Liberia (Republic)
25. Madagascar (Republic)
26. Malawi (Republic)
27. Mali (Republic)
28. Mauritania (Islamic Public of Mauritania)
29. Micronesia (Federated States of Micronesia)
30. Mozambique (Republic)
31. Nepal (Kingdom of Nepal)
32. Niger (Republic)
33. Nigeria (Federal Republic)
34. Pakistan (Islamic Republic of Pakistan)
35. Papua New Guinea (Independent State of Papua New Guinea)
36. Solomon Islands
37. Senegal (Republic)
38. Sierra Leone (Republic)
39. Somalia (Somali Democratic Republic)
40. Sudan (Repbulic)
41. Southern Sudan (Republic)
42. Tanzania (United Republic of Tanzania)
43. Togo (Togolese Republic)
44. Chad (Republic)
45. Uganda (Republic)
46. Vanuatu (Republic)
47. Central African Republic

This information sheet
and additional updated information regarding the statutory provisions
to observe when accepting employment in Germany
are available **online** at

www.arbeitsagentur.de/arbeitsmarktzulassung

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